



General Assembly

January Session, 2009

Raised Bill No. 6484

LCO No. 3717

03717_____BA_

Referred to Committee on Banks

Introduced by:
(BA)

AN ACT CONCERNING EMERGENCY MORTGAGE RELIEF.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) As used in this section
2 and sections 2 to 5, inclusive, of this act:

3 (1) "Borrower" means the owner-occupant of an eligible home, who
4 is also the borrower under an eligible mortgage of such real property.

5 (2) "Eligible home" means a one-to-four family residential property
6 located in this state including, but not limited to, a single family unit in
7 a common interest community that is a borrower's principal residence
8 and is subject to an eligible mortgage.

9 (3) "Lender" means the original lender under an eligible mortgage,
10 or its agents, successors or assigns.

11 (4) "Eligible mortgage" means any loan or extension of credit that
12 became effective during the period commencing on January 1, 2000,
13 and ending on December 31, 2008, that encumbers an eligible home,
14 and in which the principal amount of the loan does not exceed the
15 current conforming loan limit, as established from time to time by the
16 Federal National Mortgage Association, on the date the foreclosure

17 was commenced.

18 (5) "Sum available for debt service" means thirty-eight per cent of
19 the average monthly income of the borrower and the adult members of
20 the borrower's family.

21 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) From October 1, 2009, to
22 June 30, 2012, inclusive, any party to an action to foreclose an eligible
23 mortgage on an eligible home may, before the entry of judgment of
24 foreclosure, move the court to grant emergency mortgage relief
25 pursuant to this section.

26 (b) Upon motion made by any party pursuant to subsection (a) of
27 this section, the court shall appoint a real estate appraiser who shall
28 provide the court with an opinion regarding the current fair market
29 value of the eligible home. The court may make such appointment by
30 agreement of the parties or by direct appointment. In making such
31 appraisal, the appraiser shall assume the eligible home has been listed
32 with a licensed real estate broker and exposed to the market for ninety
33 days. Any costs incurred by the court as a result of a direct
34 appointment of an appraiser under this section shall be assessed
35 against the parties in the court's discretion. In addition to the appraiser
36 appointed by the court, any party may submit an appraisal of the
37 eligible home within a time frame set by the court.

38 (c) At the time the court appoints an appraiser under subsection (b)
39 of this section, the court shall also:

40 (1) Order the borrower and adult members of the borrower's family
41 who occupy the eligible home to submit to the court under sworn
42 affidavit evidence of (A) the gross income earned from all sources
43 during the month in which the appraiser is appointed and each of the
44 three months preceding such appointment, and (B) the expenses
45 accrued during the month in which the appraiser is appointed and
46 each of the three months preceding such appointment;

47 (2) Order the lender to submit to the court under sworn affidavit (A)
48 evidence of the original principal of the eligible mortgage being
49 foreclosed and the unpaid balance owed by the borrower on such
50 mortgage, and (B) a history of all debits and credits with respect to the
51 balance owed by the borrower on such mortgage; and

52 (3) Order the lender to provide notice of the motion for emergency
53 mortgage assistance to all persons holding an interest in any
54 instrument for which the eligible home serves as collateral or to all
55 fiduciaries of such persons.

56 (d) After the court has received all appraisals of the eligible home
57 required or permitted pursuant to subsection (b) of this section, and all
58 financial evidence required pursuant to subsection (c) of this section,
59 and after giving the parties to the foreclosure an opportunity to be
60 heard, the court shall determine, based on the evidence submitted by
61 all parties: (1) The present fair market value of the eligible home; (2)
62 the outstanding balance on the note owed by the borrower and
63 secured by the eligible mortgage; (3) the average monthly income that
64 the borrower and the adult members of the borrower's family would
65 reasonably be assumed to earn during the foreseeable future; (4) the
66 sum available for debt service; and (5) the monthly debt service for a
67 mortgage note in a principal amount equal to the fair market value of
68 the eligible home, as determined by the court, if such note were
69 amortized over a thirty-year term at an interest rate equal to the
70 interest rate currently being offered to qualified owner-occupants of
71 one-to-four family homes by ____.

72 (e) If the court determines that the sum available for debt service
73 would not be sufficient to pay the monthly debt service calculated by
74 the court under subsection (d) of this section, the court shall deny the
75 motion for emergency mortgage relief filed pursuant to subsection (a)
76 of this section.

77 (f) If the court determines that the sum available for debt service
78 would be sufficient to pay the monthly debt service calculated by the

79 court under subsection (d) of this section, the court shall order
80 emergency mortgage relief and shall require that the existing
81 promissory note signed by the borrower and secured by the eligible
82 mortgage be divided into two notes, as follows:

83 (1) If the sum available for debt service would support a monthly
84 payment greater than the monthly debt service calculated under
85 subdivision (5) of subsection (d) of this section, the court shall fix the
86 principal amount of the first note in the amount the sum available for
87 debt service would support.

88 (2) The amount of the other note shall be the difference between the
89 current outstanding balance owed by the borrower on the eligible
90 mortgage, as determined by the court under subsection (d) of this
91 section, and the principal amount of the first note pursuant to
92 subdivision (1) of this subsection. The second note shall not bear
93 interest and shall be payable to the lender only upon the sale of the
94 eligible home or upon default by the borrower under the first note.

95 (g) After the court determines the amounts of the notes pursuant to
96 subsection (f) of this section, the court shall order the lender to
97 promptly (1) record the order restructuring the note secured by the
98 eligible mortgage on the land records in the municipality in which the
99 eligible home is located; and (2) deliver a copy of the court's order of
100 emergency mortgage assistance to the persons to whom the lender
101 provided notice under subdivision (3) of subsection (c) of this section.

102 Sec. 3. (NEW) (*Effective October 1, 2009*) (a) After an eligible
103 mortgage is restructured pursuant to section 2 of this act, such
104 mortgage shall continue to secure payment and performance of both
105 the notes described in subsection (f) of section 2 in accordance with
106 their terms, and such restructure shall not affect the priority of its lien.

107 (b) Restructuring an eligible mortgage pursuant to section 2 of this
108 act shall not affect the priority of voluntary and involuntary liens on
109 the eligible home that are subordinate to such mortgage and shall not

110 extinguish such subordinate liens. Notwithstanding any provision of
 111 the general statutes, from the date of the court's order for emergency
 112 mortgage relief, (1) no interest shall accrue on such liens, (2) such liens
 113 shall become due and payable only upon the sale or transfer of the
 114 eligible home, and (3) the holder of such liens may not seek to
 115 foreclose such liens except following default under the note described
 116 in subdivision (1) of subsection (f) of section 2 of this act.

117 Sec. 4. (NEW) (*Effective October 1, 2009*) The borrower shall
 118 commence payment of the note described in subdivision (1) of
 119 subsection (f) of section 2 of this act in accordance with its terms on the
 120 first day of the first month following the date on which the court enters
 121 its order of emergency mortgage relief pursuant to section 2 of this act.
 122 The lender shall notify the borrower of the payment due on such note
 123 before such payment is due. If the borrower defaults in its payment
 124 obligations under such note, the lender shall be entitled to foreclose on
 125 the mortgage securing the note, and the borrower shall not be entitled
 126 to further relief under section 2 of this act.

127 Sec. 5. (NEW) (*Effective October 1, 2009*) Nothing in sections 1 to 4,
 128 inclusive, of this act shall be construed to prevent the lender from
 129 withdrawing a foreclosure action and resorting to such other remedies
 130 as may be available under law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	New section
Sec. 4	<i>October 1, 2009</i>	New section
Sec. 5	<i>October 1, 2009</i>	New section

Statement of Purpose:

To provide, in the public interest, an emergency mechanism by which courts may assist homeowners who are in foreclosure.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]